163-770

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 178.

THE STATE OF WASHINGTON EX REL. THE COLUMBIA AND PUGET SOUND RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE BOARD OF HARBOR LINE COMMISSIONERS ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED OCTOBER 20, 1892.

(15,175.)

V.—*Application for and allowance of appeal.*

LOUISA Q. LOVELL, }
vs. } No. 16852.
THE UNITED STATES. }

From the judgment rendered in the above-entitled cause on the 8th day of February, 1892, in favor of the claimant, the defendants, by their Attorney-General, on the 22d day of March, 1892, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Asst. Attorney-General.

Filed and allowed in open court, March 22, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

In the Court of Claims.

JOHN Q. LOVELL. }
vs. } No. 16852.
THE UNITED STATES. }

I, John Randolph, asst. clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, of the application of the Attorney-General for, and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 13th day of April, 1892.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 15018. Term No., 391. The United States, appellant, vs. John Q. Lovell. Court of Claims. Filed April 14th, 1892.

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a Filed Oct. 5, 1891. C. S. Reinhart, clerk.

THE BOARD OF HARBOR LINE COMMISSIONERS, Appellants,
and
COLUMBIA AND PUGET SOUND RAILROAD COMPANY, Appellees.
} No. 338.

From the superior court of King county to the supreme court of the State of Washington.

1 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, *County of King,* } *ss:*

H. W. McNeil, being first duly sworn, on oath deposes and says that he is the manager of the Columbia and Puget Sound Railroad Company; that the said Columbia and Puget Sound Railroad Company is a corporation organized and at all the times herein mention-, prior to the admission of the Territory of Washington into the Union as a State, existing under the laws of the Territory of Washington, and at all the times herein mentioned, since the admission into the Union of said Territory of Washington as a State, existing under and by virtue of the laws and constitution of the State of Washington; that it is and at all the times herein mentioned was the owner of the following-described real estate in the city of Seattle, county of King and State of Washington, to wit, the west half of block (4) four of David S. Maynard's plat of the town (now city) of Seattle; also of the littoral and riparian rights, right of access to deep water, and preference right of purchase of tide lands appertaining or belonging to the west half of block three, in said David S. Maynard's plat of the town (now city) of Seattle, and also of the littoral and riparian rights, right of access to deep water, and the preference right of purchase of the tide lands belonging or appertaining to the west half of block two, in said David S. Maynard's plat of the town (now city) of Seattle.

2 That said blocks two, three, and four each abut upon the shore of Elliott bay and the line of high tide thereof, and are chiefly valuable for their right of access to deep water and the right to construct wharves, landings, and warehouses upon the same westward to the navigable waters of Elliott bay.

That in the year 1875 the said Columbia and Puget Sound Railroad Company constructed and built from the said west half of said block four, to the westward, into deep and navigable water of said Elliott bay, which at all the times herein mentioned was and is an arm of the sea, a wharf, upon which the said Columbia and Puget Sound Railroad Company at said time constructed and built coal bunkers for the accom-odation of commerce and for the loading of ships and to facilitate navigation, and maintained and used the

same for the benefit of trade, commerce, and business up to the 6th day of June, 1889.

That the said wharf and coal bunkers were constructed at an expense of one hundred and fifty thousand dollars; that in the year 1875 the said Columbia and Puget Sound Railroad Company constructed from said blocks two and three and to the westward thereof, and to the deep and navigable waters of Elliott bay and over and across the shores thereof, permanent and substantial wharves and erected thereon warehouses, for the benefit of trade, commerce, and business, at an aggregate expense of one hundred & fifty thousand dollars; that the said wharves and warehouses were from that
3 time used continuously for the purposes of trade, commerce, and business and for the benefit thereof until the 6th day of June, 1889; that on the 6th day of June, 1889, all of said wharves, coal bunkers, and warehouses were destroyed by fire in a great and general conflagration which took place in the city of Seattle; that immediately thereafter, and prior to the 1st day of September, 1889, the said Columbia and Puget Sound Railroad Company, at an expense of three hundred thousand dollars, rebuilt said wharves, coal bunkers, and warehouses and has ever since maintained and used the same for the purposes of trade and commerce and business and to aid and facilitate navigation, and the same have ever since the first construction thereof been of great benefit and assistance in building up the business and commerce of the said city of Seattle and have been a source of revenue and profit to the said Columbia and Puget Sound Railroad Company.

That under and by virtue of an act of the legislature of the State of Washington, approved March 26th, 1890, and entitled "An act for the appraising and disposing of the tide and shore lands belonging to the State of Washington, the said Columbia and Puget Sound Railroad Company is entitled to the exclusive right for sixty days following the final appraisal of the tide lands in front of the city of Seattle to purchase the lands so improved by the construction of said wharves, coal bunkers, and warehouses, and the said Columbia and Puget Sound Railroad Company intends to avail itself of said exclusive right of purchase.

And said affiant further says that under and by virtue of
4 the act of the legislatue of the State of Washington approved March 28th, 1890, entitled "An act to create a board of harbor line commissioners," prescribing their duties and compensation, the governor of the State pointed out as such commissioners W. F. Prosser, Eugene Semple, H. F. Garretson, Frank Richards, and D. C. Guernsey; that the members of said harbor line commission have duly qualified as such and entered upon the discharge of their duties as such commissioners and are about to take final action in the location and establishment of the harbor lines within the limits of the city of Seattle, and that, as affiant is informed and believes, said commission proposes and are about to locate and establish such harbor lines in a way as to include within such harbor lines the improvements of the said Columbia and Puget Sound Railroad Company hereinbefore mentioned; that the extension of the harbor

lines over said improvements is an attempt on the part of the said harbor line commission to exercise unauthorized power and to do an act which is not within the jurisdiction of the said harbor line commission; that said harbor line commission has not authority nor jurisdiction under the laws of the State of Washington, as affiant is informed and believes, to embrace or include within the harbor lines to be located and established in front of the city of Seattle the wharves, coal bunkers, docks, and other improvements made therein; that if the harbor line commission aforesaid is not prevented by a writ of prohibition from this honorable court from extending the so-called harbor lines over the wharves and
5 docks of the said Columbia and Puget Sound Railroad Company the said commission will so extend said lines and thus deprive the said Columbia and Puget Sound Railroad Company of the use and benefit of its said wharves and docks without compensation or due process of law and cloud its title to the same in such a manner as greatly to embarrass and hinder it in the legitimate use of its said property.

And said affiant further says that he is informed and believes and alleges the fact to be that at no time has the said H. F. Garretson participated in the deliberations of said board; that it is the intention of the remaining members of said board hereinbefore mentioned to proceed with the location of said harbor line over the said property of the said Columbia and Puget Sound Railroad Company, as hereinbefore stated, without the knowledge, concurrence, or approval of the said H. F. Garretson.

And this affiant further says that the said Columbia and Puget Sound Railroad Company has no plain or adequate remedy in the premises except by the issuance of a writ of prohibition, and said affiant makes this affidavit for the purpose of procuring a writ of prohibition to be issued out of this court to the said harbor line commission-s, to wit, W. F. Prosser, Eugene Semple, H. F. Garretson, Frank Richards, and D. C. Guarnsey, and to each of them, to prohibit and restrain them and each of them from extending, locating, or establishing the harbor lines in front of the city of
6 Seattle or in the harbor of the city of Seattle over the wharves and docks of the said Columbia and Puget Sound Railroad Company or any part thereof.

Wherefore said affiant prays for the issuance of such writ, and for such other and farther relief as may be proper.

H. W. McNEILL.

Subscribed and sworn to before me this 29th day of October, 1890.

J. E. LILLY,
Notary Public in and for the State of Washington,
Residing at Seattle.

(Indorsed:) Filed Oct. 29, 1890. M. M. Holmes, clerk.

7 In the Superior Court of King County, State of Washington.

COLUMBIA & PUGET SOUND RAILROAD COMPANY, Petitioners, *vs.* HARBOR LINE COMMISSION *et al.*, Respondents. } 9457. Order.

WEDNESDAY, *October* 29, 1890.

Upon reading and filing the affidavit of H. W. McNeill, manager of the Columbia and Puget Sound Railroad Company, and upon considering the motion of J. C. Haines, Esq., attorney for the said Columbia and Puget Sound Railroad Company, praying for a writ of prohibition in this cause, the court, being fully advised in the premises, grants said motion; and it is ordered that said writ issue commanding the said Harbor Line Commission—W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, and D. C. Guernsey, and each of them—to desist and refrain from any future proceedings in locating and establishing or extending the harbor lines mentioned in said affidavit in the harbor of the city of Seattle over the premises described in said affidavit, or in such a manner as to embrace and include the same or any part thereof within the harbor lines of the city of Seattle until the 20th day of November, 1890, and until the further order of this court, and that the said respondents show cause before Hon. I. J. Lichtenberg, one of the judges of this court, at the time last aforesaid, at the court-room of this court, in the city of Seattle, at the hour of 9.30 in the forenoon, — of said company why they and each of them should not be absolutely restrained and prohibited from the proceedings referred to in said affidavit and any other proceedings in said matter; and

8 it is further ordered that said writ issue in the usual form and under the seal of this court and be returnable at the last-named date.

J. A. STRATTON, *Judge.*

Entered, Journal 12, page 62.

9 In the Superior Court of King County, State of Washington.

THURSDAY, *October* 30, 1890.

9457.

The State of Washington to the Harbor Line Commission, and to W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, and D. C. Gurensey, and each of them, Greeting:

Whereas H. W. McNeill, manager of the Columbia and Puget Sound Railroad Company, of the city of Seattle, lately in our court, at the city of Seattle, on this 29th day of October, 1890, represented that the said Columbia and Puget Sound Railroad Company is now and has been for fifteen years last past the owner of the following-described property, to wit: The west half of block 4 of David S. Maynard's plat of the town (now city) of Seattle; also of the littoral and riparian rights, right of access to deep water, and preference right of purchase of tide lands appertaining or belonging to the

west half of block 3 of said David S. Maynard's plat of the town (now city) of Seattle, and also of the littoral and riparian rights and right of access to deep water and the preference right of purchase of the tide lands belonging or appertaining to the west half of block 2, in said David S. Maynard's plat of the town (now city) of Seattle, King county, State of Washington; that said property abuts upon the shore of Elliott bay; that more than ten years ago the said Columbia and Puget Sound Railroad Company caused to be constructed, in front of and to the westward of said premises and extending into Elliott bay, wharves, coal bunkers, and warehouses, at a large expense, to wit, at an expense of one hundred and fifty
10 thousand dollars; that it, at large expense, for many years prior to June 6th, 1890, maintained and kept up said wharves, coal bunkers, and docks in aid of commerce and navigation; that the fire which occurred in the city of Seattle on the 6th day of June, 1890, and which destroyed said city, destroyed said wharves, coal bunkers, and docks; that immediately thereafter it caused said wharves, coal bunkers, and docks to be rebuilt at a great expense, to wit, the expense of $300,00- (three hundred thousand dollars), and has ever since maintained the same and now maintains the same; that said wharves, coal bunkers, and docks are necessary aids to commerce and navigation, and have been largely used and now are largely used in building up *the* and promoting the commerce of the city of Seattle and of the State of Washington; that under and by virtue of the act of the legislature of the State of Washington approved March 26th, 1890, and entitled "An act for the appraising and disposing of the tide and shore lands belonging to the State of Washington," it is entitled, as he believes, to the privilege of purchasing the space covered by the improvements made by it as aforesaid upon the front of the upland; that said harbor line commission are about to take final action in the location and establishing of the harbor lines within the city of Seattle; that, as he is informed and believes, said commission propose and are about to locate and establish such harbor lines in such a way as to include within such harbor lines its improvements hereinbefore mentioned; that the extension of the harbor lines over said
11 improvements is an attempt on the part of the said harbor line commission to exercise unauthorized power and to do an act which is not within the jurisdiction of the said harbor line commission; that said harbor line commission has not authority or jurisdiction under the laws of the State of Washington, as he is advised and believes, to embrace or include within the harbor lines to be located and established in front of the city of Seattle the wharves, docks, coal bunkers, and other improvements made thereon; that after the fire of June 6th, 1890, it rebuilt as aforesaid, at large expense, the wharves, coal bunkers, and docks above mentioned; that if the harbor line commission aforesaid are not prevented by a writ of prohibition from this honorable court from extending the so-called harbor line over the wharves, docks, and coal bunkers as aforesaid the said commission will so extend said lines, and thus deprive it of the use and benefit of its said wharves and coal bunkers,

and *could* its title to the same in such a manner as to greatly embarrass and hinder the said Columbia and Puget Sound Railroad Company in the legitimate use of its said property:

Now you, the said harbor line commission, as aforesaid, and the said W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, and D. C. Guernsey, well knowing the premises and contriving, as it is said, the said Columbia and Puget Sound Railroad Company unjustly to aggrieve and oppress, have attempted and are about to locate, establish, and extend the harbor lines in the harbor of the city of Seattle over and in such a way as to
12 include the above-mentioned premises of the said Columbia and Puget Sound Railroad Company, in contempt of us, against the laws and customs of our said State and to the manifest damage, prejudice, and grievance of the said Columbia and Puget Sound Railroad Company.

Wherefore the said H. W. McNeill, for the said Columbia and Puget Sound Railroad Company, has prayed relief and our writ of prohibition in that behalf. We therefore, being willing that the laws and customs of our said State should be observed, and that our citizens should in nowise be oppressed, do command you and each of you that you desist and refrain from any future proceedings in locating and establishing and extending the said harbor lines in the city of Seattle over said premises, or in such a manner as to embrace and include the same or any part thereof within the harbor lines of the city of Seattle until the 20th day of November, 1890, and until the further order of this court thereon, and that you show cause before Hon. I. J. Lichtenberg, one of the judges of our said court, at the time last aforesaid, at the court-room of this court, in the city of Seattle, at the hour of 9.30 o'clock on that day, why you should not be absolutely restrained and prohibited from said proceedings and from any other proceedings in such matter.

And you have then and there this writ.

Witness the Hon. J. A. Stratton, judge of this court, and the seal thereof this 29th day of October, 1890.

[SEAL.] M. M. HOLMES, *Clerk.*

13 I, J. H. McGraw, sheriff of King county, State of Washington, do hereby certify that I received the annexed writ of prohibition on the 29th day of October, 1890, and that I personally served the same on the same day on W. F. Prosser, as chairman of the harbor line commission and also as a member of said board, by delivering to him, said W. F. Prosser, personally, in said King county, two duly certified copies of said writ.

I further certify that on the same day I served the said writ on Eugene Semple and D. C. Guernsey, as members of said board, by delivering to each of them, personally, in said King county, a duly certified copy of said writ.

Dated this the 30th day of October, 1890.

J. H. McGRAW, *Sheriff,*
By E. E. HUNT, *Deputy.*

LICHTENBERG, *Judge.*

Entered, Journal 11, page 223.

14 In the Superior Court of King County, State of Washington.

TUESDAY, *November* 18, 1890.

COLUMBIA & PUGET SOUND RAILROAD COMPANY } 9457. Continued.
vs.
THE BOARD OF HARBOR LINE COMMISSION *et al.* }

Ordered by the court that this cause be, and the same is hereby, continued until Thursday, December 18, 1890.

LICHTENBERG, *Judge.*

Entered, Journal 11, page 443.

15 STATE OF WASHINGTON, } *ss:*
County of King, }

In the Superior Court, State of Washington.

STATE OF WASHINGTON, on the Relation of The Columbia River & Puget Sound Railroad Co., Plaintiffs,
v.
THE BOARD OF HARBOR LINE COMMISSION—W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, D. C. Guernsey—Allen Weir, Sec'y of State of the State of Washington, and Henry W. Miller, City Clerk of the City of Seattle, Defendants. } No. 9457. Motion.

Come now the above-named defendants and move the court to quash the writ of prohibition heretofore issued out of said court in said action, for the reason—

First. That said court has no jurisdiction in the premises.

Second. That the petition filed herein does not state facts authorizing the issuance of said writ.

W. C. JONES, *Attorney General.*
EUGENE SEMPLE &
WILEY, HALE & SCOTT,
Of Counsel for Defense.

(Indorsed:) Filed Nov. 21, 1890. M. M. Holmes, clerk, by H. H. Smith, deputy. Service admitted and copy received this 21st day of Nov., 1890. J. C. Haines. Stedman.

16 In the Superior Court of King County, State of Washington.

COLUMBIA & PUGET SOUND RAILROAD COMPANY
vs.
HARBOR LINE COMMISSION *et al.* } 9457. Motion Overruled.

FRIDAY, *January* 23, 1891.

Now, on this day, this cause came on for hearing on defendants' motion to quash the writ of prohibition heretofore issued out of

said court in said action; and, after argument of counsel and being fully advised in the premises, it is ordered by the court that said motion be, and the same is hereby, overruled; and it is further ordered by the court that a *pre-emptory* writ of prohibition issue, prohibiting defendants from further acting until provision is first made by legislation for compensation for property damages in accordance with the opinion filed in cause No. 9452; to which ruling of the court defendant excepts, and said exceptions are allowed.

LICHTENBERG, *Judge.*

Entered, Journal 17, page 233.

17 In the Superior Court of King County, State of Washington.

THE COLUMBIA & PUGET SOUND RAILROAD COMPANY
vs.
THE BOARD OF HARBOR LINE COMMISSIONERS, W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richard-, and D. C. Guernsey. } 9457. Notice of Appeal.

WEDNESDAY, *April* 1, 1891.

Now, on this first day of April, 1891, come the defendants, by Eugene Semple, one of the commissioners, and give notice in open court of their intention to appeal from the decision of this court to the supreme court of the State of Washington.

I. J. LICHTENBERG, *Judge.*

Entered, Journal 21, page 190.

18 In the Superior Court of King County, Washington.

COLUMBIA & PUGET SOUND SHORE R. R. CO., Plaintiff,
vs.
BOARD OF HARBOR LINE COMMISSION, W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, and D. C. Guernsey, Defendants. } No. 9457. Notice.

To Thomas Burke, J. C. Haines, and Thomas R. Shepard, attorneys for plaintiff in the above-entitled cause:

It appearing from an inspection of the files that the judgment rendered in the above-entitled cause February 7th, 1891, has not been entered by the parties in whose favor the same was rendered, you are hereby notified that the defendants will apply to the court on Saturday, the 11th day of April, 1891, at 9.30 a. m., to have said judgment entered *nunc pro tunc* in order to enable them to perfect their appeal therefrom to the supreme court of this State.

WILEY, HALE & SCOTT &
EUGENE SEMPLE,
Attorneys for Defendants.

(Indorsed:) Filed Apr. 7, 1891. W. B. Spencer, clerk, by H. H. Smith, deputy clerk. Service by true copy admitted this 7th day of April, 1891. J. C. Haines, att'y for pl. Received copy of the above notice this 7th day of April, 1891. Burke, Shepard & Woods, attorneys for plaintiff.

19 In the Superior Court of King County, Washington.

COLUMBIA & PUGET SOUND SHORE RAILROAD Co., Plaintiff,
vs.
BOARD OF HARBOR LINE COMMISSION, W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, and D. C. Guernsey, Defendants. } No. 9457. Motion.

It appearing from an inspection of the files that the judgment rendered in the above-entitled cause February 7th, 1891, has not been entered by the clerk, now come the defendants at this time and move the court that said judgment be rendered *nunc pro tunc* in order to enable them to perfect their appeal to the supreme court.

EUGENE SEMPLE,
WILEY, HALE & SCOTT,
Attorneys for Defendants.

(Indorsed:) Filed Apr. 7, 1891. W. B. Spencer, clerk, by H. H. Smith, deputy clerk. Received copy of the above motion this 7 day of Apr., 1891. Burke, Shepard & Woods, attorneys for pl'ff. Service admitted by true copy this 7th day of April, 1891. J. C. Haines, att'y for pl.

20 In the Superior Court of King County, State of Washington.

THE COLUMBIA & PUGET SOUND RAILROAD COMPANY
vs.
THE BOARD OF HARBOR LINE COMMISSIONERS *et al.* } 9457.

STATE OF WASHINGTON, *County of King,* } *ss.*:

I, W. B. Spencer, county clerk and *ex officio* clerk of the superior court of King county, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record in the above-entitled cause as I am by statute required on appeal to transmit to the supreme court.

In witness whereof I have hereunto set my hand and affixed the seal of said superior court this 5th day of May, 1891.

W. B. SPENCER, *Clerk,*
By W. P. McBRIDE,
Deputy Clerk.

[SEAL.]

21 (Dictated by Mr. Shepard.)

SEATTLE, WASHINGTON, *February 10th*, 1892.

Mr. C. S. Reinhart, clerk of supreme court, Olympia, Washington.

DEAR SIR: Mr. A. F. Burleigh, counsel for the Columbia & Puget Sound R. R. Co., has shown us your letter of the 9th inst. relative to the stipulation for continuance of the case of Columbia & P. S. R. R. Co. *v.* Board of Harbor Line Commissioners, No. 338, in your court. You will please add the names of the undersigned to the stipulation on the part of the relator and affix this letter to the stipulation as your authority for so doing. Please advise Mr. Burleigh and ourselves whether the continuance is granted by the court as per stipulation.

Yours truly,

THOMAS BURKE AND
BURKE, SHEPARD & WOODS.

22 In the Supreme Court of the State of Washington.

COLUMBIA & PUGET SOUND RAILROAD COMPANY
v.
W. F. PROSSER *et als.*, Harbor Line Commissioners, etc.

Stipulation.

It is hereby stipulated and agreed between the parties to the above-entitled cause that, owing to the death of J. C. Haines, Esq., counsel for the Columbia & Puget Sound Railroad Company, and that in consequence thereof new counsel have been retained to represent said company in said suit, said cause may be continued until the May session, 1892, of this court.

Dated Febr. 5th, 1892.

W. C. JONES, *Attorney General.*
ANDREW F. BURLEIGH,
Attorney for C. & P. S. R. R. Co.

THOMAS BURKE AND
BURKE, SHEPARD & WOODS.

(Endorsed on back:) "338. Filed Feb. 9, 1892. C. S. Reinhart, clerk."

23 In the Supreme Court, State of Washington.

COLUMBIA & PUGET SOUND R. R. COMPANY, Respondent,
vs.
W. F. PROSSER, EUGENE SEMPLE, *et al.*, Appellant-. } No. 338.

THURSDAY, *Feb.* 18, 1892.

This cause coming on to be heard by the court, the same is, by the stipulation of attorneys consenting thereto, ordered that it be continued for the session.

Entered in vol. 1, Record of the Supreme Court, page 610.

24 In the Supreme Court of the State of Washington.

COLUMBIA & PUGET SOUND RAILROAD CO., Respondent,
vs.
W. F. PROSSER *et al.*, Appellants. } No. 338.

THURSDAY, *June 16th*, 1892.

This cause coming on to be heard by the court on the transcript of the record of the superior court of King county and at the suggestion of counsel for the respective parties, the cause was submitted on the briefs.

Entered on page 750, Record of the Supreme Court.

25 STATE OF WASHINGTON *ex Rel.* Columbia & Puget Sound Railroad Company, Respondent,
v.
THE BOARD OF HARBOR LINE COMMISSIONERS, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, Appellants. } = 338. Filed June 30, 1892.

In this case the identical questions are again presented which were involved in the case of The Board of Harbor Line Commissioners *v.* The State *ex rel.* Yesler, 2 Wash., 530.

The present case was submitted without oral argument, and no points are made in the brief of counsel which were not fully considered in the former case.

Our views upon all the questions involved were there so thoroughly expressed that further comment becomes unnecessary.

For the reasons given in the opinion in that case the judgment of the court below is reversed and the cause remanded with directions to sustain the demurrer to the affidavit and dismiss the petition.

ANDERS, *C. J.*

We concur.
STILES, *J.*
SCOTT, *J.*
DUNBAR, *J.*
HOYT, *J.*

(Endorsed:) No. 338. Filed June 30, 1892. C. S. Reinhart, clerk, by I. W. Terry, deputy.

26 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON *ex Rel.* COLUMBIA & Puget Sound Railroad Company, Respondent,

vs.

THE BOARD OF HARBOR LINE COMMISSIONERS, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, Appellants.

No. 338. Judgment.

THURSDAY, *June 30th*, 1892.

This cause having heretofore been submitted to the court upon the transcript of the record of the superior court of King county and upon the briefs of the respective parties and without oral argument, and the court having fully considered the same and having been fully advised in the premises and having filed its opinion in writing, it is now, on this thirtieth day of June, A. D. 1892, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, reversed, with costs, and that the said Board of Harbor Line Commissioners, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, have and recover from the said Columbia and Puget Sound Railroad Company the costs of this action, taxed and allowed at fifty-six & no $\frac{100}{100}$ dollars, and that execution issue therefor; and it is further ordered that this cause be remanded to the said superior court, with directions to sustain the demurrer to the affidavit and dismiss the petition in accordance with the opinion herein filed.

Entered in Record of Supreme Court, page 774.

27 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON on the Relation of THE Columbia & Puget Sound Railroad Company, Relator and Appellee,

vs.

THE BOARD OF HARBOR LINE COMMISSIONERS, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garrettson, and D. C. Guernsey, Respondents and Appellants.

No. —.

Petition for Allowance of a Writ of Error.

To the Honorable T. J. Anders, chief justice of the supreme court of the State of Washington:

Now comes The Columbia & Puget Sound Railroad Company, the above-named relator and appellee in this court, and petitions the honorable the chief justice of this court for the allowance of a writ of error from the Supreme Court of the United States to this court to bring up for review by the Supreme Court of the United

States the judgment of this court in the above-entitled action rendered and entered herein under date of June 30th, 1892, wherein this court adjudged and directed that the judgment of the superior court of King county must be reversed and the cause remanded, with instructions to dismiss the petition for the writ of prohibition granted and issued herein by the said superior court, and for an order fixing an amount of security to be filed, that the plaintiff in error, The State of Washington on the relation of the said The Columbia & Puget Sound Railroad Company, shall prosecute its said writ of error to effect and if it fail to make its plea good shall answer all damages and costs if said writ is to operate as a supersedeas upon the hearing of said cause thereon in the Supreme Court of the United States, or all costs only if said plaintiff in error
28 shall elect to file security such that said writ shall not operate as a supersedeas as aforesaid, and for the allowance of a citation to the adverse parties upon the filing of such writ of error in this court and upon the approval and filing of such security in pursuance of the statute of the United States in such case made and provided. This petition is based upon the fact that in this cause there is drawn in question the validity of the statute of the United States and the decision in said judgment of the supreme court of the State of Washington is against its validity and adverse to this petitioner, and also upon the fact that in this cause there is drawn in question the validity of the authority exercised under the United States and the decision in said judgment of the supreme court of the State of Washington herein is against its validity and adverse to this petitioner, and also upon the fact that in this cause there is drawn in question the validity of a statute of the State of Washington on the ground of its being repugnant to the Constitution and laws of the United States and the decision of said judgment of the supreme court of the State of Washington herein is in favor of its validity and adverse to this petitioner, and also upon the fact that in this cause there is drawn in question the validity of the authority exercised under the State of Washington on the ground of its being repugnant to the Constitution and laws of the United States and the decision in said judgment in the supreme court of the State of Washington herein is in favor of its validity and adverse to this petitioner, and also upon the fact that in this cause title, right, and privilege are claimed under the Constitution and statutes of
29 and under the authority exercised under the United States and the decision in said judgment of the supreme court of the State of Washington herein is against such title, right, and privilege specially set up and claimed by this petitioner under said Constitution and statutes of and authority exercised under the United States; and your petitioner will ever pray.

Dated July 29th, 1892.

THOMAS BURKE,
ANDREW F. BURLEIGH,
Attorneys for Relator and Appellee in This Court.
BURKE, SHEPARD & WOODS,
Of Counsel.

(Endorsed on back:) "338. State of Washington *ex rel.* C. & P. S. R. Co. *v.* Harbor Line Commissioners *et al.* Petition for writ of error. Filed July 30, 1892. C. S. Reinhart, clerk."

30 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON on the Relation of The Columbia & Puget Sound Railroad Company, Relator and Appellee,
vs.
THE BOARD OF HARBOR LINE COMMISSIONERS, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, Respondents and Appellants.
No. —. Order.

The Columbia & Puget Sound Railroad Company, the above-named relator and appellee in this court, having this day filed its petition in writing to the undersigned, chief justice of the supreme court of the State of Washington, for the allowance of a writ of error from the Supreme Court of the United States to this court to bring up for review by the Supreme Court of the United States the judgment of this court in the above-entitled cause rendered and entered herein on the 30th day of June, 1892, and for an order fixing the amount of the security to be filed, that the plaintiff in error shall prosecute its said writ of error to effect, and if it fail to make its plea good shall answer all damages and costs if said writ is to operate as a supersedeas upon hearing of said cause thereon in the Supreme Court of the United States, or all costs only if said plaintiff in error shall elect to file security that such *if* said writ shall not operate as a supersedeas as aforesaid, and for the allowance of the citation for the filing of the writ of error in this court, and upon the approval and filing of such security in pursuance of the statute in such case made and provided, and the undersigned having duly considered said matter and being fully advised in the premises, now, on motion of said relator's attorneys, it is ordered—

31 That said writ of error be, and the same is hereby, allowed, and that the amount of the security to be given as aforesaid be, and the same is, fixed at the sum of ten thousand dollars if said writ is to operate as a supersedeas as aforesaid, and at the sum of $500.00 if said plaintiff in error shall elect to file security such that said writ of error shall not operate as a supersedeas as aforesaid, and that such security be conditioned that the plaintiff in error, the said State of Washington on the relation of the Columbia & Puget Sound Railroad Company, shall prosecute its said writ of error to effect, and if it fail make its plea good shall answer all damages and costs if said writ is to operate as a supersedeas as aforesaid, or all costs only if said writ is not to operate as a supersedeas as aforesaid, and that the form of said security and that the sureties thereon be approved before filing the same by the undersigned, chief justice of this court, and that upon the issuing and filing of said writ of error and the approval and filing of said

security as aforesaid said writ of error shall operate as a supersedeas, and that the citation issue thereupon to the adverse parties in pursuance of the statutes of the United States in such case made and provided.

Done at Olympia, in the State of Washington, this 30th day of July, 1892.

T. J. ANDERS,
Chief Justice of the Supreme Court of the State of Washington.

"Entered, page 31, Journal, vol. 2."

(Endorsed on back:) "338. State of Washington *ex rel.* C. & P. S. R. Co. *v.* Harbor Line Commissioners *et al.* Order for writ of error. Filed Jul- 30, 1892. C. S. Reinhart, clerk."

32 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON on the Relation of The Columbia & Puget Sound Railroad Company, Relator and Appellee,
vs.
THE BOARD OF HARBOR LINE COMMISSIONERS, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, Respondents and Appellants.
Supersedeas Bond.

Know all men by these presents that we, the above-named The Columbia & Puget Sound Railroad Company, a corporation organized and existing under the laws of the Territory and State of Washington, having its principal place of business in the city of Seattle, in said State, as principal, and R. H. Denny and N. H. Latimer, as sureties, are held and firmly bound unto the above-named The Board of Harbor Line Commissioners, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, in the sum of ten thousand dollars, to be paid to the said The Board of Harbor Line Commissioners, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey; for the payment of which, well and truly to be made, we bind ourselves and each of our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 9th day of August, A. D. 1892.

Whereas the above-named The Columbia & Puget Sound Railroad Company, relator, has prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Washington, which judgment was rendered and entered
33 in the last-named court on the 30th day of June, 1892:

Now, therefore, the condition of this obligation is such that if the above-named The Columbia & Puget Sound Railroad Company shall prosecute said writ of error to effect and if it fail to

make its plea good shall answer all damages and costs, then this obligation shall be null; otherwise the same shall be and remain of full force and virtue.

THE COLUMBIA & PUGET SOUND RAILROAD COMPANY,
By C. J. SMITH, *Its Vice-Presid't.*
R. H. DENNY.
[SEAL.] N. H. LATIMER.

Attest: JOHN Z. CAMPION, *Sec'ty.*

STATE OF WASHINGTON, } ss:
County of King, }

R. H. Denny and N. H. Latimer, being duly sworn, each for himself deposes and says: I am one of the persons named in and who signed and sealed the foregoing supersedeas bond as a surety. I am a resident of the State of Washington, and am not a counselor or attorney at law, sheriff, clerk of the superior court of said State, or other officer of said court, and I am worth the amount specified in the foregoing bond over and above all debts and liabilities and exclusive of property exempt from execution.

N. H. LATIMER.
R. H. DENNY.

Subscribed and sworn to before me this 9th day of August, A. D. 1892.

B. W. PETTIT,
[SEAL.] *Notary Public, Residing at Seattle, King County, Washington.*

34 On reading and filing the foregoing bond and on motion of the above-named relator's attorneys, it is ordered—

That said bond as to both the form thereof and the sureties thereon be approved, and the same hereby is approved, as the supersedeas bond upon the writ of error herein mentioned, and that upon filing of said bond said writ of error operate as a supersedeas in the above-entitled action.

Done at Olympia, in the State of Washington, this 11th day of August, A. D. 1892.

T. J. ANDERS,
Chief Justice of the Supreme Court of the State of Washington.

(Endorsed on back:) "338. Filed Aug. 11, 1892. C. S. Reinhart, clerk."

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said supreme court of the

State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Washington on the relation of The Columbia & Puget Sound Railroad Company and The Board of Harbor Line Commissioners, W. F. Prosser, D. C. Guernsey, Frank Richards, Eugene Semple, and H. F. Garrettson, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said stat-e, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under said clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the relator, the said Columbia & Puget Sound Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
36 ment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8th day of August, in the year of our Lord one thousand eight hundred and ninety-two.

(Seal United States Circuit Court, District of Washington, Northern Division.)

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington.
By R. M. HOPKINS, *Deputy.*

Allowed by—

T. J. ANDERS,
Chief Justice of the Supreme Court of the State of Washington.

37 [Endorsed:] 338. Writ of error. Filed Aug. 10, 1892. C. S. Reinhart, clerk.

38 *Citation.*

The United States of America to The Board of Harbor Line Commissioners, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garrettson, and D. C. Guernsey, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October, 1892, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Washington, at Olympia, in said State, wherein The State of Washington on the relation of The Columbia & Puget Sound Railroad Company is plaintiff in error and you, The Board of Harbor Line Commissioners, W. F. Prosser, Eugene Semple, Frank H. Richards, H. F. Garrettson, and D. C. Guernsey, aforesaid, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11th day of August, in the year of our Lord one thousand eight hundred and ninety-two.

T. J. ANDERS,
Chief Justice of the Supreme Court of the State of Washington.

39 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON on the Relation of THE COLUMBIA & PUGET SOUND RAILROAD COMPANY, Plaintiff in Error,
vs.
BOARD OF HARBOR LINE COMMISSIONERS, W. F. PROSSER, Eugene Semple, Frank H. Richards, H. F. Garretson, and D. C. Guernsey, Defendants in Error.

STATE OF WASHINGTON, } ss:
County of King, }

J. E. Lilly, being first duly sworn, on oath deposes and says that he is now and at all the times hereinafter mentioned has been a citizen of the State of Washington and over the age of twenty-one years and not a party to nor interested in the above-entitled action; that on the 30th day of September, 1892, he personally delivered to W. C. Jones, Esq., attorney general of the State of Washington and attorney for the above-named defendants, a true copy of the foregoing citation, said Jones being then and there in the county of Pierce and State of Washington, and said Jones accepted and retained said copy of said citation.

J. E. LILLY.

Subscribed and sworn to before me this 1st day of October, 1892.

{ Seal Andrew F. Burleigh, Notary Public, State of Washington. }
{ Commission Expires Dec. 28, 1894. }

ANDREW F. BURLEIGH,
Notary Public in and for the State of Washington, Residing at Seattle.

40 [Endorsed:] No. 338. In the supreme court, State of Washington. State of Wash. on the relation of The C. & P. S. R. R. Co., plaintiff in error, *vs.* Board of Harbor Line Commissioners *et al.*, defendants in error. Citation. Filed Oct. 6th, 1892. C. S. Reinhart, clerk. Andrew F. Burleigh, Burke building, Seattle, Washington, attorney for pl'ff.

41 STATE OF WASHINGTON, } ss:
County of Thurston, }

STATE OF WASHINGTON on the Relation of THE COLUMBIA River & Puget Sound Railroad Company, Petitioners and Respondents,
v.
THE BOARD OF HARBOR LINE COMMISSION—W. F. Prosser, Eugene Semple, H. F. Garretson, Frank H. Richards, D. C. Guernsey—Allen Weir, Sec'y of State of the State of Washington, and Henry W. Miller, City Clerk of the City of Seattle, Defendants and Appellants. } No. 338.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true, and correct copy of the transcript, record, and proceedings of this court in the above-entitled cause, and in pursuance of the writ of error heretofore issued I herewith transmit to the Supreme Court of the United States the above transcript, together with the copy of the petition for the writ of error, the original writ of error, and the original citation.

Seal of the Supreme Court, State of Washington.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of the State of Washington this 6th day of October, 1892.

C. S. REINHART,
Clerk of the Supreme Court of the State of Washington.

Endorsed on cover: Case No. 15,175. Washington supreme court. Term No., 178. The State of Washington *ex rel.* The Columbia & Puget Sound Railroad Company, plaintiff in error, *vs.* The Board of Harbor Line Commissioners *et al.* Filed October 20th, 1892.